

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 91021-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 20th day of November 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On August 6, 2008, XXXXX ("Petitioner") filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on August 13, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on August 27, 2008.

II

FACTUAL BACKGROUND

The Petitioner dislocated his left shoulder on June 24, 2006. His physician prescribed a Continuous Passive Motion ("CPM") device for his use. The Petitioner used the device for 55 days. The rent for this item was \$75.00 per day, for a total cost of \$4,125.00. BCBSM paid for twenty-one days use of the CPM device or \$1,575.00. This left a balance of \$2,550.00 that BCBSM did not

pay.

The Petitioner receives durable medical equipment (“DME”) coverage from Blue Cross Blue Shield of Michigan under its *Master Medical Supplemental Benefit Certificate Catastrophic Coverage Plan Option 2*.

The Petitioner appealed BCBSM's failure to pay for the full 55 days of use of the CPM device. After a managerial-level conference on June 27, 2008, BCBSM did not change its decision and issued a final adverse determination on June 30, 2008.

III ISSUE

Is BCBSM required to pay an additional amount for the Petitioner's use of the CPM device?

IV ANALYSIS

BCBSM's Argument

BCBSM does not dispute that the CPM device is a payable device under the certificate. However, because of the long period the device was used (August 30 to October 23, 2006) and the documentation submitted, BCBSM decided to ask its DME consultants to review the case.

BCBSM's DME consultants determined that the documentation submitted does not include any indication or rationale for use of the DME device beyond the first twenty-one days. This determination is based on BCBSM's Medical Policy covering CPM machines. BCBSM's Medical Policy regarding CPM devices states in part:

A continuous passive motion (CPM) device is considered an established therapy in the early phases of rehabilitation along with active physical therapy for patients who have had knee injury or surgery. It is also considered an established therapy for patients who have sustained an injury or undergone surgery of the articular tissues of the upper extremities. Maximum benefit is generally obtained within 3 weeks. The CPM device is considered a useful therapeutic option when indicated.

Based on this policy, BCBSM only covered the first three weeks' use of the CPM device. BCBSM does not believe it is required to pay any additional amount for this care.

Petitioner's Argument

The Petitioner argues that his doctor's notes indicate that there was need for this device beyond the first twenty-one days. Prior to his physical therapy, the Petitioner was not able to lift his arm without assistance. He believes that the use of the CPM device has greatly improved his condition. He believes that BCBSM is required to cover the CPM device for the entire 55 days that he used it.

Commissioner's Review

The question of whether it was medically necessary for the Petitioner to use the CPM device beyond the first twenty-one days of use was presented to an independent review organization ("IRO") for analysis as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO reviewer is a physician in active practice who is certified by the American Board of Orthopedic Surgery.

The IRO reviewer concluded that medical necessity for the use of the CPM device for treatment of the Petitioner's condition for more than twenty-one days postoperatively has not been established. The Petitioner had his surgery at the end of August 2006. There are no physical therapy notes provided that indicate the Petitioner's progress with regard to range of motion in the first month of surgery. However, his doctor's notes of October 9, 2006 indicate the Petitioner had 120 degrees of full flexion actively.

The IRO reviewer stated that studies have shown that the end point for use of a CPM device was 90 degrees of active abduction and it can be extrapolated in the Petitioner's case that he reached this point by the end of twenty-one days of use of this device. Based on this fact, the IRO reviewer recommended upholding the denial of coverage.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to

uphold or reverse an adverse determination the Commissioner must cite “the principal reason or reasons why the Commissioner did not follow the assigned independent review organization’s recommendation,” MCL 550.1911(16)(b). While it is unfortunate that the Petitioner was not informed of the limited period of time his use of the device would be covered, the Commissioner can discern no reason why the IRO’s recommendation should be rejected in the present case.

The Commissioner accepts the conclusion of the IRO and finds that the CPM device was not medically necessary for treatment of the Petitioner’s condition after the first twenty-one days of use .

**V
ORDER**

Respondent BCBSM’s June 30, 2008, final adverse determination is upheld. BCBSM is not required to pay an additional amount for the Petitioner’s use of a CPM device.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.